



WILLIAM J. SCOTT

ATTORNEY GENERAL

STATE OF ILLINOIS

500 SOUTH SECOND STREET

SPRINGFIELD

July 24, 1972

FILE NO. S-497

SCHOOLS:

Whether Superintendent of Public Instruction can appoint alternate to represent him on bodies of which he is an ex-officio member.

Honorable Michael J. Bakalis
Superintendent of Public Instruction
State of Illinois
302 State Office Building
Springfield 62706

Dear Superintendent Bakalis:

I have your recent letter in which you state:

"As you are aware, by my position as Superintendent of Public Instruction, I am by statute made an ex officio member of various Boards dealing with educational concerns. Because of the demands of my schedule it is not always possible to attend these Board meetings personally.

It is my understanding that as an ex officio member, I am entitled to the full privileges of membership on these Boards. The question

Honorable Michael J. Bakalis - 2.

I submit to you is whether or not I may appoint someone from my office to represent me at the meetings I cannot attend. If so, the following questions also arise:

1. May the representative's presence be counted for purposes of determining a quorum?
2. May the representative vote on questions per my instructions?
3. May the representative vote on his own discretion?
4. May the representative serve on sub-committees of the Board?"

While there are a number of bodies of which the Superintendent of Public Instruction is an ex-officio member, the principal ones are the boards governing public higher education in the State of Illinois. The statutes establishing these governing boards and providing for their membership are as follows:

Illinois Junior College Board:

"§ 2-1. There is created the Illinois Junior College Board hereinafter referred to as the 'State Board'. The State Board shall consist of 9 members as follows: the Superintendent of Public Instruction as an ex-officio voting member and 8 members to be appointed by the

Governor by and with the advice and consent of the Senate. * * *"
Ill. Rev. Stat. 1971, ch. 122, par. 102-1.

Board of Trustees of the University of Illinois:

"§ 1. The Board of Trustees of the University of Illinois shall consist of 9 elected trustees, the Governor and the Superintendent of Public Instruction. * * *"
Ill. Rev. Stat. 1971, ch. 144, par. 41.

Board of Higher Education:

"§ 2. There is created a Board of Higher Education to consist of 16 members as follows: 10 members appointed by the Governor, by and with the advice and consent of the Senate; the respective chairmen of the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Governors of State Colleges and Universities, the Board of Regents of Regency Universities, and the Illinois Junior College Board; and the Superintendent of Public Instruction. * * *"
Ill. Rev. Stat. 1971, ch. 144, par. 182.

Board of Regents of Regency Universities:

"§2. Members of Board. The Board shall consist of nine members appointed by the Governor, by and with the advice and consent of the Senate, and the Superintendent of Public Instruction or his designated representative. * * *"
Ill. Rev. Stat. 1971, ch. 144, par. 302.

Board of Trustees of Southern Illinois University:

"§ 2. The Board shall consist of 7 members appointed by the Governor, by and with the advice and

Honorable Michael J. Bakalis - 4.

consent of the Senate, and the Superintendent of Public Instruction ex-officio. * * *"
Ill. Rev. Stat. 1971, ch. 144, par. 652.

Board of Governors of State Colleges and Universities:

"§ 2. The Board shall consist of 9 members appointed by the Governor, by and with the advice and consent of the Senate, together with the Superintendent of Public Instruction, or the First Assistant Superintendent of Public Instruction if so designated by the Superintendent to serve in his place during his term of office as Superintendent, who shall be a member ex-officio. * * *"
Ill. Rev. Stat. 1971, ch. 144, par. 1002.

As may be seen from the quoted statutory provisions, the Superintendent of Public Instruction is specifically authorized to appoint another person to represent him only in the case of the Board of Regents (his "designated representative") and the Board of Governors (the "First Assistant Superintendent of Public Instruction if so designated"); in all other cases, no provision is made for the designation of an alternate or representative to substitute for the Superintendent.

The power of the General Assembly to make the Superintendent of Public Instruction an ex officio member of these bodies is clear; it arises from the legislative authority to

Honorable Michael J. Bakalis - 5.

define the duties of his office. (People v. Inglis, 161 Ill. 256.) Therefore, the questions presented involve only the authority of the Superintendent to delegate his authority and the effect of his doing so.

The basic rule concerning delegation of authority is set forth in 67 C.J.S., Officers, §104 (1950), where it is stated:

"In the absence of statutory authority a public officer cannot delegate his powers, even with the approval of a court. An officer, to whom a power of discretion is intrusted, cannot delegate the exercise thereof except as prescribed by statute.
* * *"

Again, in 67 C.J.S., Officers, §151 (1950), it is stated, with respect to the authority of deputies:

"Without statutory authority, deputies or subordinate officials have no power with respect to the duties of an office involving the exercise of judgment and discretion
* * *."

Thus, the rule is that, absent statutory authority, the Superintendent of Public Instruction may not delegate any duty involving the exercise of discretionary authority and any attempt on his part to do so would be invalid.

Honorable Michael J. Bakalis - 6.

The question then arises as to whether there is statutory authority for the Superintendent to delegate discretionary authority to a deputy. As pointed out above, there are two bodies of which the Superintendent is an ex officio member where he may designate a representative -- the Board of Regents and the Board of Governors. Considering the broad discretionary powers conferred on these bodies in the governance of the public institutions of higher education committed to their charge, it is clear that the General Assembly meant for the representative of the Superintendent to exercise the full discretionary powers vested in the other members of these bodies. The functions of these two Boards require such a high degree of discretionary judgment that there would be no purpose in permitting the designation of a representative of an ex officio member unless he were permitted to exercise the discretionary authority conferred on his principal.

Based upon the foregoing observations, it is my opinion that the Superintendent of Public Instruction may not appoint another to represent him at meetings of bodies of which he is an ex officio member unless there is specific statutory

Honorable Michael J. Bakalis - 7.

authority for him to do so. If such statutory authority does exist, the designated representative has full authority as a member of the body in question for all purposes. While not all bodies on which the Superintendent serves may be covered explicitly herein, the principles enunciated may prove useful in other similar situations.

Very truly yours,

ATTORNEY GENERAL